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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

**LINCOLN JONES, JR. and
MUYESSER NILE JONES,
individually and as trustees of
the Lincoln and M. Nile Jones
Revocable Trust; and
PROJECT SENTINEL, INC.,**

Plaintiffs,

vs.

**TRAVELERS CASUALTY
INSURANCE COMPANY
OF AMERICA,**

Defendant.

Case No. 5:13-cv-02390-LHK

FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiffs Lincoln Jones, Jr. and Muyesser Nile Jones, local landlords, and Project Sentinel, Inc., a local fair housing agency, sue defendant Travelers Casualty Insurance Company of America for refusing to insure the dwellings owned by landlords who rent to tenants using Section 8 vouchers to help pay their rent. Plaintiffs claim that Travelers' refusal to insure discriminated on the basis of sex, race, disability, familial status and age by making housing otherwise unavailable and by interfering with the fair housing rights of landlords and their current and potential Section 8 tenants in violation of the federal Fair Housing Act

1 and California Fair Employment and Housing Act.

2 **II. JURISDICTION AND VENUE**

3 2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331
4 in that the claims alleged herein arise under the laws of the United States. The
5 Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 to hear and
6 determine plaintiffs' state claims because those claims are related to plaintiffs'
7 federal law claims and arise out of a common nucleus of related facts. Plaintiffs'
8 state law claims are related to plaintiffs' federal law claims such that those claims
9 form part of the same case or controversy under Article III of the United States
10 Constitution. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332 in that
11 the matter in controversy exceeds the sum or value of \$75,000, exclusive of
12 interest and costs, and is between citizens of different States.

13 3. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that the claims
14 alleged herein arose within Santa Clara County, California.

15 **III. INTRADISTRICT ASSIGNMENT**

16 4. Assignment to the San Jose Division is proper pursuant to Local Rule
17 3-2 because the action arose in Santa Clara County.

18 **IV. PARTIES**

19 5. Plaintiffs Lincoln Jones, Jr. and Muyesser Nile Jones, a married
20 couple, own and operate two small apartment buildings located in San Jose,
21 California, which they hold in the name of the Lincoln and M. Nile Jones
22 Revocable Trust. Mr. and Mrs. Jones are the trustees and trustors of that trust.
23 Mr. and Mrs. Jones are citizens of the State of California.

24 6. Plaintiff Project Sentinel, Inc. is a nonprofit corporation with a
25 mission of fostering diversity and equal opportunity in housing. It has several
26 offices in Northern California and is headquartered in Santa Clara, California. It
27 provides fair housing services, among other things, throughout Santa Clara
28 County. One of its specific purposes and goals is the elimination of all forms of

1 illegal housing discrimination. To this end, Project Sentinel's activities include,
2 but are not limited to: (1) investigating allegations of discrimination; (2)
3 conducting tests of housing facilities to determine whether equal opportunity in
4 housing is provided; (3) taking such steps as it deems necessary to assure such
5 equal opportunity and to counteract and eliminate discriminatory housing
6 practices; and, (4) providing outreach and education to the community regarding
7 fair housing. Project Sentinel is a corporation incorporated under the laws of the
8 State of California with its principal place of business in that State.

9 7. Travelers Casualty Insurance Company of America ("Travelers") is
10 an insurance company authorized to do business in California. Travelers is a
11 corporation incorporated under the laws of the State of Illinois with its principal
12 place of business in the State of Connecticut.

13 **V. FACTS**

14 **A. THE SECTION 8 PROGRAM**

15 8. The Housing Choice Voucher Program (hereinafter referred to as
16 "Section 8") is the federal government's largest program for assisting very
17 low-income families, the elderly, and the disabled to afford decent, safe, and
18 sanitary housing in the private market. Under that program, local public housing
19 authorities ("PHAs") receive federal funds from the United States Department of
20 Housing and Urban Development to issue Section 8 vouchers to qualified persons
21 and administer the program. The recipient of the Section 8 voucher is free to
22 choose any housing that meets the requirements of the program, including
23 apartments, townhouses and single-family homes, and is not limited to units
24 located in subsidized housing projects.

25 9. When a person or family is issued a Section 8 voucher, they are
26 responsible for finding a suitable dwelling of their choice where the owner agrees
27 to rent under the Section 8 program. Rental dwellings must meet minimum
28 standards of health and safety and rental charges may not exceed certain ceilings

1 as determined by the PHA. Once the PHA approves a dwelling, the voucher
2 holder and the landlord sign a lease and, at the same time, the landlord and the
3 PHA sign a housing assistance payments contract, which runs for the same term as
4 the lease.

5 10. The PHA pays the Section 8 housing subsidy to the landlord directly
6 on behalf of the voucher holder. The voucher holder is then responsible for
7 paying the difference between the actual rent charged by the landlord and the
8 amount subsidized by the Section 8 program.

9 **B. THE CODY WAY APARTMENTS**

10 11. Since the 1980s, plaintiffs Lincoln and Muyesser Jones have owned
11 two apartment buildings located in San Jose, California – a ten-unit building
12 located at 1883 Cody Way and a seven-unit building located at 1895 Cody Way
13 (the “Cody Way apartments”).

14 12. For more than a decade, Mr. and Mrs. Jones have rented dwellings at
15 the Cody Way apartments to persons who utilize Section 8 vouchers to help make
16 their rental payments. In each instance, Mr. and Mrs. Jones have entered into
17 housing assistance payments contracts with the Housing Authority of the County
18 of Santa Clara, the local PHA serving San Jose and Santa Clara County. For Mr.
19 and Mrs. Jones, the Section 8 program is an important source of tenants and steady
20 source of revenue.

21 13. At all times since they have owned and operated the Cody Way
22 apartments, Mr. and Mrs. Jones have maintained policies of property and liability
23 insurance on both properties. Property insurance is required as a condition for
24 their mortgage loans on the Cody Way apartments. Before purchasing insurance
25 from Travelers, Mr. and Mrs. Jones had insured the Cody Way apartments with the
26 same insurance company for almost ten years. During that period of time, they
27 never made or had a claim made under their policies.

28 14. Prior to the expiration of their existing insurance policies in February

1 2012, an insurance broker solicited Mr. and Mrs. Jones, suggesting that they could
2 obtain lower premiums for the Cody Way apartments with another insurance
3 company. In response, Mr. and Mrs. Jones switched insurers, purchasing policies
4 on both of the Cody Way properties for the policy period from February 1, 2012 to
5 February 1, 2013, from Travelers. The policies included property and liability
6 coverage.

7 15. In August 2012, a visitor to a resident of one of the Cody Way
8 apartments units slipped and fell on the stairs. Upon learning of the incident, Mrs.
9 Jones notified Travelers of the possibility of a claim, although no claim was
10 ultimately made by the visitor. In the course of investigating the possible claim,
11 Travelers became aware that Mr. and Mrs. Jones had Section 8 tenants renting at
12 the Cody Way apartments.

13 16. On November 16, 2012, Travelers notified Mr. and Mrs. Jones that
14 Travelers would not be renewing the policies for the Cody Way apartments.
15 Travelers' stated reason for non-renewal was the fact that the Cody Way
16 apartments had Section 8 tenants. The non-renewal was effective February 1,
17 2013. Travelers' decision to cancel the insurance on the Cody Way apartments
18 based solely on the presence of their Section 8 tenants surprised and upset Mr. and
19 Mrs. Jones.

20 17. In December 2012, Mr. and Mrs. Jones received notice from their
21 mortgage company notifying them that it had received notice that the insurance
22 policies on the Cody Way apartments had been cancelled or not renewed. The
23 mortgage company advised Mr. and Mrs. Jones that they were required to have
24 insurance on the properties as a condition for their mortgage loans.

25 18. Mrs. Jones immediately began searching for replacement insurance
26 coverage. She encountered difficulty finding replacement insurance and, as
27 Travelers' cancellation deadline drew closer, Mrs. Jones became increasingly
28 anxious that she would be unable to find affordable replacement insurance. Mrs.

1 Jones finally was able to secure replacement insurance in February 2013, though
2 the premiums were more expensive than those paid under their cancelled Travelers
3 policies.

4 **C. PLAINTIFFS CONTACT PROJECT SENTINEL**

5 19. On December 14, 2012, Mrs. Jones contacted Project Sentinel
6 concerning Travelers' cancellation of the insurance on the Cody Way apartments
7 because of occupancy by Section 8 tenants. Project Sentinel investigated Mrs.
8 Jones' complaint and counseled her regarding her fair housing rights. Project
9 Sentinel engaged in education and outreach efforts, including mailing letters and
10 informational flyers to PHAs, local landlords and apartment owner organizations
11 throughout California, alerting them to the fair housing issues related to Travelers'
12 refusal to insure buildings with Section 8 tenants. In those mailings, Project
13 Sentinel described the disparate impact Travelers' policy has on persons protected
14 under the Fair Housing Act and urged the recipients to contact the state insurance
15 commissioner to help stop the practice.

16 **D. DISCRIMINATORY HOUSING PRACTICES**

17 20. Travelers engages in a pattern or practice of discrimination in
18 violation of the federal and state fair housing laws. Travelers' discriminatory
19 housing practices include, but are not limited to, the following:

- 20 a. Refusing to provide property or hazard insurance for dwellings
21 because of race, sex, disability, familial status and age;
- 22 b. Providing property or hazard insurance services differently because of
23 race, sex, disability, familial status and age;
- 24 c. Refusing to provide property or hazard insurance for dwellings
25 because of the protected status of persons intending to reside in those
26 dwellings;
- 27 d. Coercing persons, either orally, in writing, or by other means, to deny
28 or limit the benefits provided by that person in connection with the rental of

1 a dwelling because of race, sex, disability, familial status and age;

2 e. Threatening or interfering with persons on account of their having
3 aided or encouraged other persons to exercise or enjoy rights protected
4 under the fair housing laws;

5 f. Following a practice or policy that has a discriminatory effect by
6 actually or predictably resulting in a disparate impact on persons on the
7 basis of race, sex, disability, familial status and age; and,

8 g. Following a practice or policy that creates, increases, reinforces or
9 perpetuates segregated housing patterns because of race, sex, disability,
10 familial status and age.

11 **E. DISCRIMINATORY IMPACT**

12 21. The persons injured by Travelers' refusal to insure landlords who rent
13 to persons using Section 8 vouchers include the landlords who already rent or seek
14 to rent to persons using Section 8 vouchers as well as the Section 8 renters and
15 rental applicants themselves.

16 22. Travelers' practices actually or predictably result in a disparate
17 impact on persons in classes protected by the fair housing laws, or create, increase,
18 reinforce or perpetuate segregated housing patterns because of race, sex, disability,
19 familial status and age.

20 23. For example, the group of persons who use Section 8 vouchers to
21 help pay their rent in Santa Clara County are:

- 22 • Five times more likely to be a female headed household as compared
23 to all renter households in Santa Clara County;
- 24 • Three times more likely to be a black headed household as compared
25 to all renter households in Santa Clara County;
- 26 • Three times more likely to be headed by a householder over age 60 as
27 compared to all renter households in Santa Clara County;
- 28 • Two times more likely to be a household with at least one member

1 with a disability as compared to all households in Santa Clara County; and,

- 2 • Five times more likely to be a female headed household with children
3 as compared to all households in Santa Clara County.

4 24. The group of persons who use Section 8 vouchers to help pay their
5 rent in California are:

- 6 • Five times more likely to be a female headed household as compared
7 to all renter households in California;
8 • Three times more likely to be a black headed household as compared
9 to all renter households in California;
10 • Two times more likely to be headed by a householder over age 60 as
11 compared to all renter households in California;
12 • Almost two times more likely to be a household with at least one
13 member with a disability as compared to all households in California; and,
14 • Five times more likely to be a female headed household with children
15 as compared to all households in California.

16 25. As a result, Travelers' policy or practice actually or predictably
17 results in a significantly disproportionate impact on the basis of sex, race,
18 disability, familial status and age on persons seeking to utilize Section 8 vouchers,
19 making housing unavailable and interfering with the ability of landlords, including
20 Mr. and Mrs. Jones, to offer housing opportunities to tenants and applicants
21 protected under the federal and state fair housing laws.

22 **F. DISCRIMINATORY TREATMENT**

23 26. In the United States as a whole, households participating in the
24 Section 8 program are predominantly minority and predominantly female headed.
25 In fact, almost 50% of those households are black and almost 50% are headed by
26 females with children. In some cities, Section 8 households are overwhelmingly
27 black and/or headed by single women with children. There is a widely held belief
28 that the Section 8 program serves minorities.

1 including economic losses, inconvenience, anxiety, embarrassment, humiliation
2 and other emotional distress and violation of their civil rights. Accordingly, Mr.
3 and Mrs. Jones are entitled to compensatory damages.

4 31. In doing the acts of which plaintiffs complain, Travelers and its
5 agents and employees intentionally or recklessly violated Mr. and Mrs. Jones'
6 federally protected rights and acted with malice and oppression. Accordingly,
7 plaintiffs are entitled to punitive damages.

8 32. Travelers' discriminatory and unlawful practices have impaired and
9 frustrated Project Sentinel's mission to eliminate discriminatory housing practices
10 and assure equal housing opportunities, and have required Project Sentinel to
11 devote resources to identify and counteract Travelers' unlawful practices. Project
12 Sentinel seeks declaratory and injunctive relief only to remedy its injuries caused
13 by Travelers' policies.

14 33. There now exists an actual controversy between the parties regarding
15 Travelers' duties under federal and state fair housing laws. Accordingly, plaintiffs
16 are entitled to declaratory relief under federal and state law.

17 34. Unless enjoined, Travelers and its agents or employees will continue
18 to engage in the unlawful acts and the pattern or practice of discrimination
19 described above. Plaintiffs have no adequate remedy at law. Plaintiffs are now
20 suffering and will continue to suffer irreparable injury from Travelers' acts and the
21 pattern or practice of discrimination unless relief is provided by this Court.
22 Accordingly, plaintiffs are entitled to injunctive relief under federal and state law.

23 35. The sum or value of Mr. and Mrs. Jones' California Fair Employment
24 and Housing Act claims for compensatory and punitive damages, in addition to the
25 estimated award of plaintiffs' attorneys' fees under Government Code § 12989.2,
26 exceeds the sum or value of \$75,000, exclusive of interest and costs.

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1 **VI. CLAIMS**

2 **A. FIRST CLAIM**

3 **Violation of the Fair Housing Act**

4 36. Plaintiffs reallege and incorporate by reference each paragraph
5 previously alleged in this complaint.

6 37. Travelers injured plaintiffs by committing discriminatory housing
7 practices in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*

8 **B. SECOND CLAIM**

9 **Violation of the Fair Employment and Housing Act**

10 38. Plaintiffs reallege and incorporate by reference each paragraph
11 previously alleged in this complaint.

12 39. Travelers injured plaintiffs by committing unlawful practices in
13 violation of the Fair Employment and Housing Act, California Government Code
14 § 12900 *et seq.*

15 **VII. RELIEF**

16 WHEREFORE, plaintiffs pray for relief as follows:

17 1. A declaration that Travelers' refusal to insure landlords who rent to
18 tenants on the Section 8 program violates the Fair Housing Act, 42 U.S.C. §§ 3601
19 *et seq.*, and the California Fair Employment and Housing Act, Government Code
20 §§ 12900 *et seq.*;

21 2. An order and judgment enjoining Travelers, its agents, employees,
22 successors, and all other persons in active concert or participation with it from
23 refusing to insure, or cancelling the insurance of, landlords on the ground that they
24 rent to tenants in the Section 8 program;

25 3. An order and judgment requiring Travelers, its agents, employees,
26 successors, and all other persons in active concert or participation with it to
27 develop and implement policies, practices, and procedures that do not discriminate
28 against persons protected by the fair housing laws;

1 4. An award of compensatory damages to plaintiffs Lincoln Jones and
2 Muyesser Jones, according to proof;

3 5. An award of punitive damages to plaintiffs Lincoln Jones and
4 Muyesser Jones, according to proof;

5 6. An award of attorneys' fees and costs; and,

6 7. Such other and further relief as the Court may deem just and proper.

7 Dated: August 6, 2013.

8 Respectfully submitted,

9 BRANCART & BRANCART

10 /s/ *Elizabeth Brancart*

11 _____
12 Elizabeth Brancart
13 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

On August 6, 2013, I served electronically, via the Court's ECF system, a copy of the attached **FIRST AMENDED COMPLAINT** upon the following attorneys:

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/s/ Elizabeth Brancart